

Message Text

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12
ACTION IO-13

INFO OCT-01 AF-08 ARA-10 EA-09 EUR-12 NEA-10 CIAE-00

DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00 NSC-05 PA-02

PRS-01 SP-02 SS-15 USIA-15 DHA-02 ORM-02 OIC-02 ISO-00

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R 082044Z OCT 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 9732

INFO USMISSION GENEVA

UNCLAS USUN 4305

E.O. 11652: N/A

TAGS: SHUM

SUBJECT: THIRD COMMITTEE--ITEM 69(D) - STATUS OF THE
INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT
OF APARTHEID

REF: STATE 249594

1. THIRD COMMITTEE COMPLETED ACTION ON OCT 8 ON THE
DRAFT RESOLUTION ON THE STATUS OF THE INTERNATIONAL CON-
VENTION ON THE SUPPRESSION AND PUNISHMENT OF APARTHEID
(A/C.3/31/L.4). IN ACCORDANCE WITH INSTRUCTIONS REFTEL,
MISSION CONSULTED WITH EC-9 PRIOR TO THE VOTE TO CHECK
OUT POSSIBLE "NO" VOTES AMONG WEO STATES. EC-9 ADVISED
US THAT THEY WOULD ABSTAIN AND THAT NETHERLANDS, SPEAK-
ING ON BEHALF OF EC-9, WOULD MAKE EXPLANATION OF VOTE.
US, THEREFORE, ABSTAINED AND MADE DETAILED EXPLANATION
PRIOR TO THE VOTE.

2. VOTE ON THE RESOLUTION WAS 90-0-28(US). INCLUDED
AMONG THOSE ABSTAINING WERE THE FOLLOWING: URUGUAY,
AUSTRALIA, AUSTRIA, NEW ZEALAND, NICARAGUA, NORWAY,
PAPUA NEW GUINEA, IRAN, PORTUGAL, FIJI, CANADA, SPAIN,
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ISRAEL, JAPAN, SWEDEN, FINLAND, IRELAND, COSTA RICA,

AND EC-9.

3. A SIGNIFICANT NUMBER OF THOSE ABSTAINING MADE EXPLANATIONS OF VOTE ALONG THE LINES OF THE US STATEMENT. TEXT OF US EXPLANATION OF VOTE FOLLOWS:

QUOTE MR. CHAIRMAN

I WISH FIRST FOR THE RECORD TO BE ABSOLUTELY CLEAR ON THE ISSUE OF APARTHEID. THE UNITED STATES FULLY SHARES THE SENTIMENTS CONDEMNING THE PRACTICE OF APARTHEID WHICH UNDERLIE THE CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID AS WE HAVE EMPHASIZED ON MANY OCCASIONS.

WE WERE NOT, HOWEVER, ABLE TO SUPPORT THE ADOPTION OF THE CONVENTION WHEN IT WAS APPROVED BY THE GENERAL ASSEMBLY AT THE 28TH SESSION. WE HAVE SERIOUS DIFFICULTIES WITH THE CONVENTION FROM A LEGAL POINT OF VIEW. IT IS IN SEVERAL RESPECTS INCONSISTENT WITH CONCEPTS BASIC TO OUR LEGAL SYSTEM SUCH AS THE PROTECTION OF INDIVIDUAL RIGHTS. MOREOVER, WE DO NOT THINK THIS CONVENTION MAKES ANY POSITIVE CONTRIBUTION TO THE INTERNATIONAL LAW AND CONVENTIONS WHICH COVER THIS SUBJECT.

WE FEEL, ON THE CONTRARY, THAT CERTAIN PROVISIONS OF THE CONVENTION COULD BE VERY DAMAGING TO FUNDAMENTAL HUMAN RIGHTS, TO THE VERY STRUCTURE OF INTERNATIONAL LAW AND EVEN TO THE CONSTITUTIONAL STRUCTURE OF THE UN ITSELF.

APARTHEID IS DEPLORABLE AND SHOULD BE ELIMINATED. WE SHOULD NOT BLUNT THE STRENGTH AND UNITY OF THE INTERNATIONAL COMMUNITY'S REACTION TO THIS OUTRAGE BY APPROACHING THE PROBLEM IN A MANNER INCONSISTENT WITH THE SERIOUSNESS OF CRIMINAL LAW ISSUES. OUR INABILITY TO GO ALONG WITH THE CONVENTION AND OUR DISAPPROVAL OF IT REFLECTS A PROFOUND CONCERN FOR HUMAN RIGHTS AND FUNDAMENTAL SAFEGUARDS OF THESE RIGHTS--NOT A LACK OF CONCERN AT THE INJUSTICE SUMMED UP IN THE WORD "APARTHEID." WE MUST NOT JEOPARDIZE SOME FUNDAMENTAL HUMAN RIGHTS IN OUR DESIRE TO ELIMINATE ABUSES TO OTHER FUNDAMENTAL RIGHTS. INDIVIDUAL RIGHTS ARE A SEAMLESS WHOLE

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AND ONCE WE PUNCH LOOPHOLES IN THAT FABRIC OF PROTECTION, WE JEOPARDIZE THE INDIVIDUAL RIGHTS OF ALL CONCERNED, INCLUDING THOSE WE SOUGHT TO PROTECT.

AS WE EXPLAINED IN PREVIOUS STATEMENTS, THE BROAD EXTENSION OF INTERNATIONAL JURISDICTION UNDER THIS CONVENTION--EVEN IN CASES WHERE THERE ARE NO SIGNIFICANT CONTACTS BETWEEN THE OFFENSE AND THE FORUM STATE, AND WHERE THE OFFENDER IS

NOT A NATIONAL OF THE FORUM STATE--IS IMPOSSIBLE FOR THE UNITED STATES TO ACCEPT. THIS IS INCONSISTENT WITH BASIC NORMS AND FAIRNESS AND DUE PROCESS ESSENTIAL IN CRIMINAL LAW. WE DO NOT, FOR EXAMPLE, ACCEPT THAT AN AMERICAN CITIZEN VACATIONING IN A FOREIGN COUNTRY COULD BE EXTRADITED TO ANOTHER FOREIGN COUNTRY AND TRIED THERE FOR SOMETHING HE HAS SAID IN THE TERRITORY OF THE US.

WE HAVE ALSO PREVIOUSLY STATED OUR OBJECTIONS TO THE PROVISIONS OF ARTICLE X (TEN) REFERRED TO IN OPERATIVE PARAGRAPH 5 OF THE RESOLUTION BEFORE US. OUR VIEWS REMAIN UNCHANGED.

MR. CHAIRMAN, I WISH TO REITERATE HERE MY COUNTRY'S STRONG OPPOSITION TO THE PRACTICE OF APARTHEID WHICH MUST BE ELIMINATED. HOWEVER, FOR THE REASONS GIVEN ABOVE WE VOTED AGAINST THE CONVENTION AND SHALL ABSTAIN ON THIS PROCEDURAL RESOLUTION. UNQUOTE
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: APARTHEID, COMMITTEES, MEETING VOTING RECORDS, UNGA RESOLUTIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 08 OCT 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USUNN04305
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760381-0980
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761065/aaaacens.tel
Line Count: 134
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION IO
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 STATE 249594
Review Action: RELEASED, APPROVED
Review Authority: izenbei0
Review Comment: n/a
Review Content Flags:
Review Date: 10 AUG 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <10 AUG 2004 by barnescd>; APPROVED <13 DEC 2004 by izenbei0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: THIRD COMMITTEE--ITEM 69(D) - STATUS OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF APARTHEID
TAGS: SHUM, UN
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006